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THE SUQUAMISH TRIBE

P.O. Box 498

Suquamish, Washington 98392

3 August 2000

Chuck Finley
Acting Regional Administrator
Environmental Protection Agency
Region X
1200 Sixth Avenue
Seattle, WA 98101

Tom Fitzsimmons
Director
Washington Department of Ecology
Post Office Box 47600
Olympia, WA 98504-7600

RE: Placement of Lower Duwamish River on EPA's National
Priorities List (NPL)

Dear Mr. Finley and Mr. Fitzsimmons:

This letter is written pursuant to our interests and responsibilities as a Natural Resource Trustee for Elliott Bay and the Lower Duwamish River. Our purpose is to urge the placement of the Lower Duwamish River on EPA's National Priorities List.

In March of 1998, The Suquamish Tribe, together with other Natural Resource trustees for Elliott Bay and the Lower Duwamish River, supported NOAA's petition that EPA conduct an assessment of the lower Duwamish River. The public received notice in August 1998 of EPA's intent to conduct the environmental assessment to help determine whether the Duwamish River should be considered for inclusion on the National Priorities List (NPL).

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For the past year and some months, EPA and the Department of Ecology have been working mainly with a group of four potentially responsible parties (the Lower Duwamish Waterway Group) to propose an Administrative Order on Consent (AOC) under the Comprehensive Environmental Response and Liability Act process (CERCLA) and an Agreed Order under the state's Model Toxic Control Act (MTCA) as an alternative to an NPL listing as defined in the CERCLA process. On July 23, 1999, EPA and Ecology, together with the Port of Seattle, King County Executive, City of Seattle and Boeing Company representatives, proposed that their collaborative alternative process was the most efficient way to proceed with a comprehensive sediment remedial investigation of the site. At that meeting, the Vice Chairman of the Suquamish Tribal Council, Merle A. Hayes, spoke for the Tribe, indicating that although the Tribe preferred that the site be listed, the Tribe would be open to listening and participating in the development of a negotiated federal AOC.

More than a year has now passed, and we must register our disappointment that the approach has not succeeded in resolving major issues identified in an EPA memorandum dated August 2, 1999. Nor has the process yielded an equivalent level or protection for the public trust rights as would be provided under an NPL listing.

Shortly after the July 23, 1999 meeting, EPA indicated that it was assembling the support package for listing the site, and that a decision on listing was anticipated for the fall of 1999 (Item one of the Memorandum). Only in July 2000 were Trustees given any indication that the package was indeed being assembled.

Other specific problems with the alternative to an NPL listing include the failure to secure adequate tolling agreements with two parties, the Boeing Company and the Port of Seattle, extending the statute of limitations; and the consummation of a funding agreement with the Suquamish Tribe and other Trustees for participation (item seven). Originally, EPA and Ecology had provided assurances that both of those of those matters would have been resolved prior to publishing a public fact sheet and invitations for comments on the proposed AOC and Remedial Investigation/Feasibility Study (RI/FS) documents. Yet, the public fact sheet was released in late July 2000 prior to the resolution of these vital issues.

In underscoring our preference for an NPL listing, the Suquamish Tribe also confirms its commitment to continue working with other Natural Resource Trustees, EPA and Ecology to ensure that remediation of the site proceeds without further delays and impediments.

Sincerely,

A handwritten signature in cursive script that reads "Merle A. Hayes". The signature is written in dark ink and is positioned below the word "Sincerely,".

Merle A. Hayes
Vice Chairman,
Suquamish Tribal Council